IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 15527 of 2007(W)

AGAINST THE ORDER IN EA.56/2007 IN
EA.55/2007 of ADDL.D.C. & ADDL.MACT,ALAPPUZHA.

.....

PETITIONER: 2ND JUDGMENT DEBTOR

C.K.MURALIMOHAN, S/O.P.A.KRISHNAN
VRINDAVANAM, CHERTHALA

BY ADV. SRI.ROY CHACKO

RESPONDENTS:

---

1. M/S. ASOK FINANCE CORPORTION, REPRESENTE
BY PROPRIETOR ASOK JAIN, 193 MIN STREET,PARK TON
CHENNAI REP:BY P/A. HOLDER, SASIDHARAN
S/O.APPU, MANAMMAM RAJAMANDIRAM, KOYILANDY.P.O.
CALICUT.

2. DEEPU K.DEVAN, S/O.P.DIVAKARAN
BHAKTHIVILASOM, MUHAMMA.P.O.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE CLAIM PETITION FILED BY THE 1ST RESPONDENT BEFORE THE SOLE ARBITRATOR

EXT.P2: -DO- OF THE AWARD DT. 27.12.1999 PASSED BY THE SOLE ARBITRATOR IN THE CLAIM PETITION

EXT.P3: -DO- OF THE EXECUTION PETITION NO: 25/04 FILED BY THE 1ST RESPONDENT BEFORE THE SUB COURT, CHERTHALA

EXT.P4: -DO- OF THE OBJECTION FILED BY THE PETITIONER TO THE EXECUTION PETITION

EXT.P5: -DO- OF THE E.A. NO: 155/05 DT 14.11.2005

EXT.P6: -DO- OF THE ORDER DT. 5.12.2005 PASSED IN E.A. NO: 171/05

EXT.P7: -DO- OF THE JUDGMENT DT. 26.10.2006 IN W.P(C) 15977/06

EXT.P8: -DO- OF THE EXECUTION APPLICATION NO: 55 OF 2007 DT. 20.3.2007

EXT.P9: -DO- OF THE COMMON ORDER DT. 7.4.2007 IN E.A. 55/07 AND E.A. 56/07

EXT.P10: -DO- OF THE SUIT FILED BY THE PETITIONER ALONG WITH THE 2ND RESPONDENT BEFORE THE SUB COURT, CHERTHALA

jj /TRUE COPY/

PA. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 15527 OF 2007 W

Dated this the 9th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Ext.P9. The brief facts are that an arbitration award has been passed by the Arbitrator at Chennai and the said arbitration award had been put into execution in the light of Section 36 of the Arbitration and Conciliation Act 1996 before the courts in Kerala. Originally it was filed before the Subordinate Judge's Court, Cherthala. Then represented before the District Court, Alappuzha and later it was made over to the Additional District Judge, Alappuzha for consideration. The Additional District Judge, Alappuzha considered the matter, sale was effected, and now it has reached the stage of delivery of the property and the present dispute centers round the the basic question of jurisdiction regarding the executability of the decree by the courts in Kerala. Learned counsel for the writ petitioner submits before me that the court which has got the jurisdiction to set aside the award under Section 34 of the Act is the court capable of executing the decree and in this case it is the Principal Court of Original Jurisdiction, Chennai and therefore the execution petition should have been filed before the said court and

then it would have been transferred by that court for execution to the courts in Kerala. He has relied upon a decision of the Karnataka High Court reported in **ICDS Ltd. v. Mangala Builders P.Ltd.** (AIR 2001 Karnataka 364). In that case the Karnataka High Court held that the proper court having jurisdiction to entertain is that court which can exercise power under Section 34 of the Act. If it is so, the present execution could not have been filed directly before the courts in Kerala for execution. Therefore, the learned counsel submits that the whole proceedings are vitiated. He also had invited my attention to the counter filed by him on 24.9.2005 wherein it is stated that he has challenged the right of the court to challenge the decree. When confronted with such a difficult situation learned counsel for the respondent had drawn my attention to Section 21(3) of the CPC. He would contend that jurisdictional objection should be raised at the earliest opportunity and therefore having reached the stage of delivery it may not be proper at this point of time to go to the jurisdictional aspect. The learned Additional District Judge did not have the opportunity to consider the said point because the objection was filed on 24.9.2005 and he was disposing of an execution application of the year 2006 where the jurisdictional question has not

been so raised. Therefore, I feel an opportunity should be given to both sides to advance their rival contentions and the court to consider the question of jurisdiction as well as the contention of the decree holder regarding the bar to raise such a contention at a belated stage under Section 21(3) of the Civil Procedure Code. Therefore the orders under challenge are set aside and the matter is remitted back to the court for fresh disposal after hearing both sides and till a final decision is taken on the matter the delivery will stand deferred. The parties are directed to appear before the court on 31.7.2007. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj